



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 14 2011

REPLY TO THE ATTENTION OF:

WW-16J

U.S. Army Corps of Engineers, Louisville District
James M. Townsend, Chief
Regulatory Branch
600 Dr. Martin Luther King Place
Louisville, Kentucky 40202

Re: Public Notice LRL-2010-576 /Vigo Coal Operating Company, Red Brush – West Mine

Dear Mr. Townsend:

The United States Environmental Protection Agency has reviewed the Vigo Coal Operating Company (Vigo) letter dated December 22, 2010. In response, EPA has discussed the project with Robert J. Brown of your staff on January 10, 2011. During this discussion, remaining concerns were identified and are detailed below:

Alternatives Analysis

The Operations Map included as part of the Section 404 permit application clearly depicts the coal processing facility located on stream 1AS1-1. Construction of a coal processing facility is not a water dependant activity and as such it is presumed that there are upland alternatives available. EPA and Corps staff agree that the applicant has not demonstrated through their alternatives analysis that no practicable alternatives to locating the facility in a stream channel exist. Specifically, the applicant must explain why the coal processing facility cannot be located at the Red Brush Mine (S-00349) which is located to the east of this proposed project, or an alternative upland area. The alternatives analysis is incomplete and the project does not comply with the 404(b)(1) Guidelines.

Cumulative Impacts Assessment

Staff from both Agencies concur that the cumulative impacts of mining in the 12-digit HUC are not adequately addressed by the applicant within their permit application or their response. The analysis only lists National Pollutant Discharge Elimination System (NPDES) permits for mines within the watershed. Vigo's Cumulative Impact and Scope Analysis (CISA) states "both the Lower Ohio-Little Pigeon and Cypress Creek have been extensively impacted by logging, agriculture and mining," however there is no accompanying explanation or analysis specific to mining in the watershed. Further, the

analysis does not address Vigo's adjacent Red Brush Mine and whether this project separately or in concert with similar projects will impact the watershed. As Red Brush West is an expansion of a previously permitted mine, the agencies expect the analysis would include a discussion of impacts and mitigation that was required for that mine.

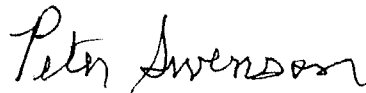
As stated in our previous letter, the point at which the tributary from the site enters Cypress Creek is the point at which Cypress Creek is no longer impaired downstream to the Ohio River. This information was clearly depicted on a figure included by Vigo in their CISA. In response #5 to our concerns, Vigo states that the unbuffered stream was likely a source of impairment to Cypress Creek. This seems unlikely because the impaired segments of Cypress Creek are upstream of the unbuffered stream mentioned. The applicant's response did not adequately address whether this project will contribute to the impairment of Cypress Creek as required by the 404(b)(1) Guidelines.

Mitigation

If the applicant avoids construction of the coal processing plant in stream 1SA1-1, then EPA would accept the proposed mitigation plan to create 15.7 acres of wetland and 2,733 linear feet of stream to include the cattle restrictive fencing. With the recommended reduction in impacts along stream 1SA1-1, the mitigation proposed would offset the temporal and cumulative impacts as well as offset the intensity of the post mining land use. EPA recommends that the monitoring period be increased to 10 years with the option for the Corps to release no earlier than after the fifth year if the ecological performance criteria for streams and forested wetlands are met.

In conclusion, EPA continues to object to the issuance of a permit for this project as proposed because it does not comply with the 404(b)(1) Guidelines. Additional information is needed regarding alternative location of the coal processing facility to assess the project's impacts and determine if those impacts are appropriately mitigated. Please notify us of Vigo's response to the comments outlined above and any subsequent changes to the permit application. Thank you for the opportunity to provide comments on the public notice and permit documents. If you have any questions please contact me at 312-886-0236 or Andrea Schaller at 312-866-0746 or Melissa Gebien at 312-886-6833.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter Swenson". The signature is fluid and cursive, with the first name "Peter" and last name "Swenson" clearly distinguishable.

Peter Swenson, Chief
Watersheds and Wetlands Branch

cc: Randy Braun
Section 401 WQC Section
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Michael Litwin
Bloomington Ecological Services Field Office
U.S. Fish and Wildlife Service
620 South Walker Street
Bloomington, Indiana 47403

U.S. Army Corps of Engineers, Louisville District
ATTN: Mr. Robert J. Brown, CELRL-OP-FW
P.O. Box 489
Newburgh, Indiana 47629-0489